Linn County / AFSCME Local 231 (Professional) (Maint.) (Tech & Para Prof) & (Clerical)
2004-2005
CEOs: 376, 377
SECTOR: 683, 684 2

IN THE MATTER OF ARBITRATION	)	**INTEREST ARBITRATION**
	)	
between	)	
	)	
Linn County, Cedar Rapids, Iowa	)	**PERB Case CEO #376/377/683/684 Sector 2**
	)	
-and -	)	
	)	
American Federation of State, County and Municipal Employees, Local 231	)	**April 4, 2005**

RECEIVED
2005 APR -6 AM 8:35
PUBLIC EMPLOYMENT RELATIONS BOARD

APPEARANCES

For Linn County

Gary Jarvis, Assistant Attorney
Trude Elliott, Human Resources Director

For AFSCME Local 231

Kristi Cave, Staff Representative
Diane Davis, President
Joyce Sramek, Chief Steward

JURISDICTION OF ARBITRATOR

Pursuant to Section 20.22, Code of Iowa, Linn County, a governmental subdivision of the State of Iowa (hereinafter referred to as the "County" or "Employer") and AFSCME Local 231, representing 537 maintenance, clerical, technical and para-professional, and professional bargaining unit (hereinafter referred to as the "Union") mutually selected Richard John Miller, Maple Grove, Minnesota, as the arbitrator, from a panel submitted by the Iowa Public Employment Relations Board.

The County and Union (hereinafter referred to as the "Parties") engaged in collective bargaining and mediation subsequent to December 6, 2004. The Parties were unable to resolve every issue in bargaining. The Parties waived fact-finding and proceeded directly to interest arbitration pursuant to Chapter 20.22, Code of Iowa.

The Parties entered into an independent impasse agreement which extended the statutory March 15th impasse completion date. The Parties agreed to allow the arbitrator whatever time he deemed necessary to render his decision.

A hearing in the matter convened on March 14, 2005, at 9:00 a.m. in the County Courthouse, Cedar Rapids, Iowa. The hearing was tape recorded with the arbitrator retaining the tapes for his records. The Parties were afforded full opportunity to present evidence and arguments in support of their respective positions. The Parties agreed to not file post hearing briefs, after which the arbitrator considered the record to be closed.

FINDINGS OF FACT

ITEMS AT IMPASSE FOR CONTRACT YEAR EFFECTIVE JULY 1, 2005 THROUGH JUNE 30, 2006

1. Wages
2. Insurance
3. Hours of Work
4. Leaves of Absence
5. Transfer Procedures
6. Performance Evaluation Procedures

ITEM ONE: ARTICLE 21, JOB CLASSIFICATIONS AND WAGE RATES

UNION POSITION

An across the board increase for all employees of 3.85% effective July 1, 2005. Increase the pay grade of the LIFTS dispatcher from 55 to 56. Female Correction Officer in the Corrections Center to receive an additional twenty-five cents ($0.25) per hour pay premium.

COUNTY POSITION

Section 1 a: The steps and wage rates are set forth in the attached Schedules A, A1, A2, B, B1 and B2. The job classifications assigned to each schedule are written on the appropriate schedule.

Section 1 b: The salary schedules (A, A1, A2, B, B1 and B2) will increase three percent (3.00%) on July 1, 2005.

CONCLUSIONS OF LAW

Interest arbitration undertaken in Iowa pursuant to Chapter 20, Code of Iowa, is final offer, item by item arbitration. Pursuant to Section 20.22(3) and (11), Code of Iowa, the arbitrator must choose, on each impasse item, the most reasonable of the finals offers submitted by the parties and/or the advisory recommendation of the fact-finder, if available. In this case there were no fact-finder recommendations on any of the items at impasse only the final offers submitted by the Parties.

The Public Employment Relations Act provides explicit factors that arbitrators must consider in fashioning their awards at Section 20.22(9), Code of Iowa. Each of the factors have been considered by the undersigned in each impasse item as follows:

9. The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties, including the bargaining that led up to such contracts.

b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

C. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

The past bargaining history between the Parties establishes that they have not consistently adhered to patterned settlements with the PPME Local 2003 bargaining unit representing 92 law enforcement employees (Deputy Sheriffs and Communication Officers) in the County. The Employer has reached a settlement with PPM for 3% across the board increase on July 1, 2005 (which is the same position taken in this case), 3.25% across the board increase on July 1, 2006, and 3.5% across the board wage increase

on July 1, 2007. The Linn County Board of Supervisors has not yet acted on management and non-bargaining unit salaries for the upcoming fiscal year.

It would appear that the Parties have relied to great extent upon external comparisons for establishing past wage rates. Comparability is encompassed within Section 20.22(9)(b). In order to address comparability, the arbitrator must first determine which public jurisdictions are comparable to Linn County. Linn County has the second largest population in Iowa. The appropriate comparables to be utilized in this interest arbitration are the five other Iowa counties with the largest populations as proposed by the County. The six Iowa counties are as follows:

COUNTY	POPULATION	AREA SQ. MILES	ASSESSED VALUATION
Polk	374,601	594	$12,258,703,579.00
Linn	191,701	724	$ 6,659,122,187.00
Scott	158,668	447	$ 5,127,605,579.00
Blackhawk	128,012	576	$ 3,131,654,052.00
Johnson	111,006	622	$ 6,197,085,864.00
Woodbury	103,877	872	$ 2,751,760,131.00

The above listed six counties share many similarities. These similarities include a large population, the nature and quality of services provided to the public, as well as the funding mechanisms under Iowa law by which the services are financed. The Union proposed the same above counties with the addition of Clinton County and Pottawattamie County and also included the City of Cedar Rapids in their proposed comparability group. The counties of Clinton and Pottawattamie are considerably smaller than Linn County and should be excluded from consideration. Likewise, a comparison of cities versus counties is not a valid comparison in this case. The services provided by counties and cities in Iowa are, for the most part, different as are the funding mechanisms by which services are financed.

Specifically, the arbitrator utilized the following collective bargaining agreements for comparability purposes:

Polk County - AFSCME - 2001-2004 (amended and extended to 2006) - covering maintenance, clerical, secondary roads, paraprofessional and professional employees.

Scott County - AFSCME - 2002-2006 - covering administrative, clerical, technical and security, and maintenance and custodial employees.

Scott County - Secondary Roads Employee Council - 2001-2005 covering secondary roads employees.

Johnson County - PPME - 2004-2005 - covering county attorney, auditor, board of supervisors, physical plant, recorder, treasurer, information services, planning and zoning, and public health employees.

Johnson County - PPME - 2004-2005 - covering secondary roads employees.

Johnson County - AFSCME - 2003-2006 - covering S.E.A.T.S. para-transit transportation employees.

Blackhawk County - PPME - 2004-2005 - covering clerical employees.

Blackhawk County - PPME - 2004-2005 - covering maintenance and custodial employees.

Blackhawk County - Teamsters - 2004-2005 - covering secondary road employees.

Woodbury County - AFSCME - 2004-2008 - covering clerical and maintenance employees.

Woodbury County - Communications Workers of America - 2004-2007 - covering secondary roads employees.

Of the comparable counties, Blackhawk County and Johnson County are engaged in collective bargaining. Blackhawk County and PPME, representing the clerical unit, have settled on a one year agreement providing for a 2.25% across the board wage increase. The other two Blackhawk County agreements are scheduled for mediation.

Johnson County and PPME have settled their two agreements, one covering employees of the various elected officials' offices and other administrative personnel and the other covering secondary roads department employees. Both settlements are two year agreements. The administrative personnel settlement

provides across the board wage increases of 2% effective July 1, 2005, 2% effective January 1, 2006, and 3.25% effective July 1, 2006. The secondary roads settlement provides across the board increases of 3.25% effective July 1, 2005, 2% effective July 1, 2006, and 2% effective January 1, 2007. The remaining Johnson County agreement, with AFSCME covering SEATS para-transient service calls for across the board increases of 2% on July 1, 2005 and 2% on January 1, 2006, in the third year of a three year agreement.

Both of Scott County's collective bargaining agreements provide for a 3.25% across the board wage increase on July 1, 2005. The Scott County AFSCME agreement will be in the last year of a four year agreement. The Scott County Secondary Roads Employee Council agreement will be in the first year of a four year agreement which provides for 3.25% across the board wage increases each year.

The Woodbury County agreement with the CWA, representing secondary road department employees, provides for a 2.5% across the board wage increase effective July 1, 2005. This is the second year of a four year agreement providing across the board wage increases of 2.5%, 2.5%, 2.75% and 3%. The Woodbury County agreement with AFSCME, representing courthouse employees, provides for a 2.7% across the board wage increase effective July 1, 2005. This increase represents the second year of a four year agreement providing across the board wage increase of 2.7%, 2.7%, 2.85% and 3%.

The Polk County AFSCME agreement provided for a 3.5% across the board wage increase on July 1, 2003, the third year of a three year agreement. However, Polk County and AFSCME agreed to an amendment and extension of the agreement providing for a wage freeze on July 1, 2003, which remains in effect until June 30, 2005. Effective June 30, 2005, there will be a 3% across the board wage increase. On January 1, 2006, there will be a 2.5% across the board wage increase.

The Polk County AFSCME agreement provides for a 5.5% across the board wage increase spread out during the upcoming fiscal year. However, Polk County is coming off a two year wage freeze.

It is clear from this comparability that the Employer's final position of 3% is more aligned with the settlement trend than the Union's final offer of 3.8%. There are no settlements

other than Polk County AFSCME agreement, which incidentally is coming off a two-year wage freeze, that equals or exceeds the Union's final offer. There is also no convincing evidence that Union members need a catch-up wage increase to justify their wage position above the settlement trend of the comparables.

The cost of living ("CPI") has remained relatively low throughout the length of the current agreement. The annual rise in the CPI for 2004 is 2.7%. The Employer's across the board increase of 3% exceeds the increase in the CPI.

The Union has proposed a wage upgrade for the LIFTS dispatcher job classification of one pay grade from salary schedule A pay grade 55 to salary schedule A pay grade 56. There is only one person in the job classification. The LIFTS Department operates a para-transit system, providing door-to-door transportation service for disabled and elderly Linn County residents. Of the comparability group counties, only Johnson County operates a para-transit system. A comparison of Linn County salary schedule A pay grade 55 with the salary schedule for a dispatcher in Johnson County reveals that the LIFTS dispatcher job classification is currently paid comparably with the dispatcher job classification in Johnson County.

The Union has further proposed a $0.25 per hour pay premium for female correctional officers. The female correctional officer job classification is currently paid at salary schedule A pay grade 56. Of the comparability group, Scott county, Johnson County, Woodbury County, and Polk County employ civilian correctional officers. In Blackhawk County, the work is performed by deputy sheriffs who are certified peace officers with additional duties to those of female correctional officers. It should also be noted that in Woodbury County the job classification performing the duties of female correctional officer is also responsible for security in the jail. Linn County female correctional officers are not responsible for security of the facility. Therefore, the Woodbury County position is not an equitable comparison.

A comparison of the Linn County female correctional officer job classification salary schedule with that of the comparability group having a similar job classification (Scott, Johnson and Polk Counties), reveals that the Linn County female correctional officer job classification is paid comparably with similar job classifications in the comparability group. It should also be

noted that Polk County is the largest county in Iowa, with twice the population and taxable valuation of the next largest county, Linn County. Historically, there is a wage difference between Polk County and the remainder of the comparability group, those being the other six largest counties in Iowa.

In the final analysis, although the County did not allege an inability to pay argument but only a financial constraint argument it should be noted that the Employer's proposed 3% across the board wage increase with step and longevity schedule movement, which constitutes a wage proposal that increases total bargaining unit payroll by 3.77%, is the more reasonable position when judged against the Union's final offer of 3.85% across the board wage increase, step and longevity movement, LIFTS dispatcher job classification upgrade, and $0.25 per hour premium for female correctional officers, which constitutes a 4.65% increase to total bargaining unit payroll.

AWARD

The County's position is sustained.

ISSUE TWO: ARTICLE 23, GROUP INSURANCE

UNION POSITION

The Union proposes current contract language on employee contribution and plan design.

COUNTY POSITION

The County proposes the following changes to the current agreement in Article 23:

Section 2 paragraph 2: If the services are performed by a provider not listed with the Alliance Select Program the deductible will apply for all covered services and the coinsurance will be paid at 80% by Blue Cross and Blue Shield and 20% by the subscriber. Effective January 1, 2006, payment for prescription drugs covered under the Alliance Select Program will apply toward the deductible and after the deductible is satisfied then paid at 70% by Blue Cross and Blue Shield and 30% by the subscriber.

Section 2 paragraph 3: The out-of-pocket maximum will remain at $650 for the single contract and $1,300 for the family contract per calendar year. Effective January 1, 2006 the out-of pocket maximum will increase to $700 for the single contract and $1,400 for the family contract. After the out-of-pocket maximum has been met, the insurance coverage pays 100% of the remaining covered expenses per calendar year. The lifetime maximum coverage is $1,000,000 per covered individual.

Section 2 paragraph 4: Effective July 1, 2005 the employee will pay $10.00 per month toward the single contract premium and $30.00 per month toward the family contract premium with the Employer paying the balance of the monthly single or family contract premium under the County's Alliance Select Program.

Section 2 new paragraph 5: Effective January 1, 2006, employees utilizing the emergency room of any hospital provider will pay a co-payment of $50.00 for each visit. This co-payment will not apply to the deductible or out-of-pocket maximum of the County's Alliance Select Program.

CONCLUSIONS OF LAW

The Union proposes no change in the current group health insurance language contained in Article 23, Group Insurance. The Employer, on the other hand, proposes several changes to this language. The Employer seeks to amend Article 23, Group Insurance, Section 2, paragraph 4, to increase the amount plan subscribers pay toward the family contract premium from $25.00 to $30.00 per month effective July 1, 2005. No increase is proposed in the amount plan subscribers pay toward the single contract premium. The Employer also proposes to amend Article 23, Section 2, paragraph 2, providing that co-insurance for prescription drugs shall be paid 70% by the Employer's health insurance plan and 30% by the plan subscriber effective January 1, 2006. Currently, co-insurance for prescription drugs is paid 80% by the Employer's health insurance plan and 20% by the plan subscriber. In addition, the Employer proposes to amend Article 23, Section 2, paragraph 3, to increase, effective January 1, 2006, the annual out-of-pocket maximums from $650 to $700 for the single contract and from $1300 to $1400 for the family contract. Finally, the Employer proposes to amend Article 23, Section 2, by adding a paragraph providing for a $50 co-payment to be paid for each hospital emergency room visit. This co-payment would not be

eligible for co-insurance payment and would not count toward deductibles or out-of-pocket maximums.

The Employer has reached a voluntary settlement with the PPME bargaining unit for a three year agreement. Year one of this three year agreement, effective July 1, 2005, implements the same amendments to the Employer's group health insurance plan as are contained in the Employer's final offer. Year two of the PPME agreement implements plan design changes whereby the annual out-of-pocket maximums are increased from $700 to $800 on the single contract and from $1400 to $1600 on the family contract. Also in year two of the PPME agreement payment by plan subscribers toward the family contract monthly premium is increased from $30.00 to $40.00. Year three of the PPME agreement increases the annual out-of-pocket maximums from $800 to $900 for the single contract and $1600 to $1800 for the family contract. Also in year three of the PPME agreement payment by plan subscribers toward the family contract monthly premium is increased from $40 to $50.

The Linn County Board of Supervisors has acted to implement the same amendments to the Employer's group health insurance plan as are contained in the three year PPME agreement for the 160 Linn County elected officials, deputy elected officials, management and non-bargaining unit personnel.

While there is the internal settlement with PPME Sheriff's Department employees that is the same as the Employer's position effective July 1, 2005, the Parties have not agreed to a second and third year agreement like PPME and the County. This is significant because the wage increases for the second and third years of the PPME agreement are 3.25% and 3.50% respectively, which would ease the health insurance increases agreed upon by PPME employees for the two following years. Consequently, the AFSCME employees with a one year agreement effective July 1, 2005, are not afforded the same equitable quid pro quo as PPME employees with a three year contract.

A comparison of the non-union employees with unionized employees is not a fair comparison in this case. The terms and conditions of non-union employees are established by unilateral action of the Linn County Board of Supervisors without resort by those employees to the impasse procedures established in Chapter 20 of the Iowa Code. In addition, the wages for the non-union

employees have not yet been set by the Linn County Board of Supervisors for any of the next three years. Thus, it is unknown whether the non-unionized employees will be able to offset the increase employee payments in health insurance as was afforded to PPME employees by virtue of their three year agreement with increased wage percentages for the final two contract years of 3.25% and 3.50%.

Another reason to maintain the current health insurance language is that the Parties made changes in employee contributions for the past two years and the impact on those changes for this current year have only been in effect for a few months. As a result, there is no valid reason to rush into additional employee contributions until the Parties know the impact of the current changes. In fact, the claims experience for the first six months of the current fiscal year, July 1, 2004, through December 31, 2004, has been encouraging. Claims for this period have been steady, near the level for the previous year. The favorable claims experience of the first six months of the current fiscal year has generated $500,000 of operating revenue in excess of operating expense. Should the experience hold for the entire current fiscal year, operating revenue for the year would be approximately $1,000,000 more than operating expense. However, the plan began the current fiscal year with literally no reserves. Even should the favorable claims experience hold for the entire current fiscal year, the replenished reserve would amount to less than two months of plan operating expense.

The evidence establishes that the financial participation of bargaining unit employees in the County's health insurance plan is quite competitive and is close to the low end of the continuum of health insurance sharing in comparable counties. The County is simply neither the leader nor the follower in terms of employee contribution toward the health insurance plan. The County is clearly within the mainstream of the other comparable counties.

AWARD

The Union's position is sustained.

ISSUE THREE: HOURS OF WORK

POSITION OF THE PARTIES

The Union proposes to amend Article 8, Hours of Work and Shifts, Section 2, by adding a sentence to the end of current paragraph as follows: "No employee will be forced to work more than 12 hours in a 24 hour period." The Employer opposes the addition of this sentence to Article 8, Section 2.

The Union proposes that Article 9, Overtime Call In and Reporting Pay, be amended by the addition of a new section, following current Section 1 as follows: "All hours worked in excess of an employee's payroll authorization be posted and distributed in the same manner as overtime." The Employer opposes Union's proposal of a new section added to Article 9, following the current Section 1.

The Union proposes to amend Article 17, Paid Holidays, Section 9 as follows: "The Employer will, during work weeks in which a paid holiday is celebrated and with a 10 day notice, alter employee work schedules, where necessary, to assure that hours worked plus holiday hours paid equal the employee's scheduled hours for the week." The Employer opposes amendment of Article 17, Section 9, to require a ten day notice.

Although the Union's proposal seeks amendment of three separate articles, they constitute one impasse item, that being hours of work.

CONCLUSIONS OF LAW

The Union's proposal that Article 8, Section 2, be amended to provide that no employee will be forced to work more than 12 hours in a 24 hour period stems from female correctional officers working in the Linn County Correctional Center. Female correctional officers are responsible for the care and custody of female detainees at the correctional center. The correctional center is a continuous operation which requires that a female correctional officer be on duty at all times. The correctional center is staffed by five female correctional officers. There are 21 shifts per week which must be filled by these correctional officers. The five female correctional officers can fill a maximum of 25 shifts per week without overtime. Obviously, when all five female correctional officers work their full work week,

no overtime is necessary. If one of the five female correctional officers is absent for her entire work week, anywhere from one to four overtime shifts is created. The schedule of the female correctional officer who is absent determines how many overtime shifts are generated. This is due to the fact that one of the female correctional officers is a floater who works three fixed shifts and two shifts which float per week. Under the current agreement, the ability to schedule the floater to avoid overtime is restricted by the fact that the floater's schedule must be made ten days in advance. In addition, the floater will not be scheduled for back-to-back eight hours shifts as part of her regular schedule.

The issue is exacerbated by an extended medical leave taken by one of the female correctional officers. This, combined with normal absences such as sick leave, vacation, and comp time results in additional overtime shifts to be filled.

Overtime is first offered on a voluntary basis. If it can not be filled in this manner, forced overtime is utilized. Employees are not allowed to work more than 16 hours in a 24 hour period. In addition, employees who cannot be contacted cannot be forced to work. Thus, an employee who declines voluntary overtime when called may not be available to answer the phone when called back to be forced in because no one wanted the overtime on a voluntary basis. This can result in a female correctional officer on duty being forced to work the next shift when there is an unexpected absence. The Employer allows one female correctional officers to schedule paid leave at any given time. Naturally, unexpected absences generate more forced overtime during the peak vacation months of July and August.

For the six month period from July, 2004, through December, 2004, the five female correctional officers worked a total of 33 - 16 hour shifts, during which eight hours were forced overtime. Twenty-nine of the 33 shifts were scheduled at least seven days in advance and four were emergency forced overtime where there was from two hours to just under seven days notice. This amount of forced overtime does not appear to be excessive or oppressive given the above circumstances.

It appears that the Union's position is an attempt to add more female staffing to alleviate forced overtime. However, staffing is not a mandatory item of bargaining under Chapter 20, Code of Iowa, and the Employer is not agreeing to arbitrate

staffing. Even assuming additional staffing is a consideration, the Employer cannot be expected to staff a relatively small department or division on the possibility of a long-term medical leave becoming necessary. Moreover, the hiring of an additional female correctional officer would not eliminate, or even significantly reduce, the amount of overtime, forced or voluntary. An additional female correctional officer with a set schedule would rarely be on duty at the right time to fill in for an unexpected or even a scheduled absence. The scheduled hours of the additional officer would represent, for the most part, inefficient excess capacity. Even were the additional female correctional officer a floater, the floater's schedule must be set ten days in advance. Therefore, an additional floater would not contribute to reducing voluntary or forced overtime for unexpected absences and would still create significant inefficient excess capacity.

The Employer has, on occasion, been able to assign on-duty female deputy sheriffs to serve as female correctional officers when staffing could be provided in no other way. However, on-duty female deputy sheriffs are not always available to fill in for absences of female correctional officers.

Clearly, staffing problems would be exacerbated rather than being alleviated with the 12 hour restriction of the Union's proposal even though the Employer has agreed to a provision similar to the Union proposal in its PPME contract with the Linn County Sheriff's Office. The Employer and PPME agreed in their contract effective July 1, 2005, that no employee be required to work more than 4 hours of involuntary overtime immediately preceding or immediately following a regularly scheduled shift, unless the employee was provided 48 hours notice. However, the provision in the PPME contract further provides that an employee may be required to work more than four hours of involuntary overtime immediately preceding or immediately following a regularly scheduled shift without the required notice when no other qualified employee can be located to work the shift needing filled. Thus, the Union's proposal is flawed because it does not limit its operation to less than 48 hour notice or limit its operation by recognizing the operational requirements of the correctional center.

The second Union proposal under the impasse item of Hours proposes to add a new paragraph after the current paragraph 1 of Article 9 providing that all hours worked in excess of an

employee's payroll authorization be posted and distributed in the same manner as overtime. The Union's purpose in proposing this new language is that on occasion, part-time employees do work more than their regularly scheduled hours in a week and such additional hours should be equalized among part-time employees.

Some Employer departments are staffed by a majority of part-time employees who provide social services to disabled clients with whom they have an established relationship. Such relationships can be difficult to establish and are often vital to the effective provision of services. Where additional hours of service are needed for a client, it is neither practical nor efficient that a caseworker with whom the client is unfamiliar be brought in on a temporary basis in order to equalize hours among employees. The strict equalization required by the Union proposal will result in inefficiency, and in many instances, compromised service to clients.

The third Union proposal on the impasse item of Hours, proposes that Article 17, Section 9, be amended by adding a ten day notice requirement when the Employer alters holiday week work schedules where necessary to assure that hours worked plus holiday hours equal the employee's scheduled hours for the week.

The current language in Article 17, Section 9, was added to the agreement two years ago by an interest arbitrator who accepted the Employer's proposed language. It provides that "[n]otwithstanding the provisions of Article 8, Section 2 and 3, the Employer will, during work weeks in which a paid holiday is celebrated, alter employee work schedules, where necessary, to assure that hours worked plus holiday hours equal the employee's scheduled hours for the week."

This issue arises where employees are working four ten hours shifts in a week which occurs in the Linn County Secondary Roads Department. During the summer, most of the department converts to a four ten hour day work week to take advantage of increased daylight hours for road construction and repair projects. Only the Independence Day holiday week is affected, as the four day work week is not implemented until after Memorial Day and ends prior to Labor Day. The Union alleged that they received no advanced notice of when during the week of July 4, 2004, the extra two hours were to be worked which required some employees to use two hours of vacation in order to receive ten hours of paid vacation for that holiday. The Employer claims that proper

and timely notification was given to the employees by supervision. Specifically, the Employer alleges that employees were notified in May by supervision of the conversion to ten hours days, and they were notified when the two extra hours were to be added during Independence Day week.

This is an issue that needs to be resolved informally between supervision and the affected employees. The other departments utilizing ten hours shifts have been able to address this issue informally. Even assuming the affected employees were not notified in a timely manner, one time would not justify the language proposed by the Union. If timely notice is not given in the future by supervision to the affected employees, then there would be justification for the Union's proposal. Consequently, the current contract language in Article 17, Section 9 should be retained. The evidence establishes no compelling need for amendment of the current contract language as proposed by the Union.

AWARD

The Employer's position is sustained.

ISSUE FOUR: ARTICLE 16, LEAVES OF ABSENCE

POSITION OF THE PARTIES

The Union proposes to add a new section 3 as follows and to re-number old sections 3 - 7: "Full time employees who have accumulated 600 hours of sick leave may convert each additional accrued 32 hours of sick leave to 8 hours of vacation. If an employee's accrued sick leave account thereafter is depleted below 600 hours, no conversion right exists until the account is rebuilt to 600 hours. An employee may convert a maximum of 96 hours of sick leave each fiscal year. Use of vacation pursuant to this clause will be governed by the rules of regular vacation."

The current contract does not provide for conversion of accumulated or accrued sick leave to vacation. The Employer proposes that no conversion of accumulated or accrued sick leave to vacation be granted by the arbitrator.

CONCLUSIONS OF LAW

With the exception of Scott County all of the other agreements within the comparable counties offer sick leave conversion to vacation. Most of the counties convert on a 4 to 1 basis (Polk, Johnson, and Woodbury Counties), and some contracts offer a better benefit with a 3 to 1 basis or 20 to 8 basis (Blackhawk County).

All but two of the agreements providing for conversion of sick leave to annual leave require a higher threshold of accumulated sick leave hours before any excess can be converted than does the Union's proposal. Those agreements above 600 hours range from 640 hours to 960 hours.

While the evidence establishes that the Union's position requires a lower threshold of accumulated sick leave hours than the majority of the comparable county agreements, the majority of those agreements provide for at least a 4 to 1 sick leave to annual leave conversion or better. Thus, the Union's proposal is within the mainstream of the comparable county agreements. The County's position of no sick leave to annual leave conversion is not even remotely within the mainstream of the comparable counties. Clearly, the Union's position is more reasonable of the final offers of the Parties based upon external comparability.

Obviously, the cost of any new contract benefit is of importance to both the County and the arbitrator under Chapter 20.22(9)(C) and (d). There would be 90.5 employees that would be eligible to receive sick leave conversion to annual leave (vacation) under the Union's proposal for the contract year. The maximum cost would be $35,968.32. This is based on an average hourly wage of $16.56 x 24 hours (maximum conversion) = $397.44 per person x 90.5 eligible employees. There is no convincing evidence that the County would not be able to adequately afford the Union's proposal.

The County submits that this issue does not lend itself to comparability analysis on the argument that the County does not know what the other counties received in return for their conversion plans. This argument is without merit. There was no evidence by the County that comparable county employees gave up anything to get this conversion. Based upon the fact that the majority of the comparable counties offered sick leave to annual

leave conversion would support the traditional argument that such conversion provides incentive to employees to minimize sick leave use. In fact, the 4 to 1 sick leave to annual leave conversion becomes less of a financial liability to the County than having employees accrue an unlimited number of sick leave hours and then using them on an 1 to 1 basis for income protection.

AWARD

The Union's position is sustained.

ISSUE FIVE: ARTICLE 11, PROMOTIONS AND TRANSFERS

UNION POSITION

The Union proposes to amend Article 11, Section 1, first sentence on the top of page 13 of the current contract as follows: "Employees working fixed shifts may bid to a vacant shift or vacant days off within the first forty-eight hours of posting." The Union further proposes to amend the first sentence of Article 11, Section 8 as follows: "Employees may not bid to the same job classification within their department unless a different shift is posted."

COUNTY POSITION

The Employer proposes that current agreement language be retained. The agreement currently provides in Article 11, Section 1, unnumbered paragraph 4, that employees in continuous operations working fixed shifts may bid to a vacant shift or vacant days off within the first 48 hours of posting. The agreement currently further provides in the first sentence of Article 11, Section 8, that employees may not bid to the same job classification within their department, but may bid to the same classification in a different department.

CONCLUSIONS OF LAW

The agreement currently provides that employees in continuous operations may bid to a vacant shift or vacant days off. As Employer's non-continuous operations are scheduled Monday through Friday, the real issue with this proposal concerns the bidding of shifts. The current agreement already provides for bidding of different shifts in continuous operations.

There was no convincing evidence that the ability to assign work location had not been abused by the County in any of its operations. The Employer currently makes every effort to honor employee requests for a change to hours when the opportunity arises. Under the current agreement, employees can bid to different job classifications within their department. The current agreement also authorizes part-time employees to bid to the same job classification in their department if the vacancy is full-time. Although there is no contractual agreement, employees are allowed to bid to vacant positions with more regularly scheduled hours. The Union's proposal would have the indirect effect of restricting Employer's ability to assign employees to a building based on such considerations as the skills required at the particular building and matching the hours needed at the building with the scheduled hours of employees.

The Union's proposal is also ambiguous. It does not define a shift. If the Union's intent was to provide someone working an evening shift with a means by which to be considered for an opening on a day shift, they should have included the definition of a shift as a schedule with a starting time some number of hours different from that of another scheduled starting time. As submitted, the Union proposal should not be accepted.

AWARD

The Employer's position is sustained.

ISSUE SIX: ARTICLE 28, PERFORMANCE APPRAISALS

POSITION OF THE PARTIES

The Union proposes to delete the current Article 28 in its entirety, while the County proposes to retain this entire current contract provision.

CONCLUSIONS OF LAW

Article 28 provides that employees receive a job performance appraisal annually from their supervisor. Article 28 sets forth in some detail the purposes of performance appraisals, forms or tools to be utilized in preparing appraisals, means by which bargaining unit members may include their written comments with the appraisal, the time line for conducting the appraisal, and

that the performance appraisal results may be challenged through the grievance procedure.

Article 28 was first included in the agreement effective July 1, 2003, as the result of interest arbitration. The language accepted by the interest arbitrator simply provided that employees and their supervisors would meet at least annually for the purpose of performance appraisal and also specified the appraisal form to be used if one was not already in use by a department.

The Parties negotiated the current Article 28, which was included in the agreement effective July 1, 2004. The current language in Article 28 was more comprehensive than the interest arbitrator's award, as it details the performance appraisal process, including bargaining unit member input and appeal rights.

During the 20 months that performance appraisals have been in effect for the 537 bargaining unit members, 9 grievances have been brought concerning bargaining unit member performance appraisals. Of these, 3 have been settled or withdrawn and 6 remain pending. As there are more than 500 bargaining unit members and nearly two years worth of performance appraisals completed, there have been approximately 800 performance appraisals performed. Clearly, the process is working well, as reflected by the small number of appraisal grievances. There has been no showing by the Union that supervisors have abused their authority to any extent that would warrant the deletion of Article 28. Performance appraisal systems force both the supervisor and employee to deal with what, on occasion, may be unpleasant or sensitive matters in a mature and professional manner. Legitimate interests of both parties are protected through such a system.

While the arbitrator recognizes that not all performance appraisals are or will be perfectly performed by supervisors, the limited number of grievances is an indication that the current process continues to improve as supervisors and employees become more familiar with the process.

There exists no compelling reason for elimination of Article 28 of the current agreement only after two years into its implementation.

AWARD

The Employer's position is sustained.

Richard John Miller

Dated April 4, 2005, at Maple Grove, Minnesota.

CERTIFICATE OF SERVICE

I certify that on April, 4, 2005, I served the foregoing Interest Arbitration decision upon each of the parties' representatives to this matter and to the Iowa PERB by U.S. Regular Mail at their respective addresses as shown below:

Mr. Gary P. Jarvis
Assistant Linn County Attorney
930 First Street SW
Cedar Rapids, IA 52404-2161

Ms. Kristi Cave
Staff Representative
AFSCME Local 231
1817 Alden Avenue
Cedar Falls, IA 50613
515-284-1704

Iowa Public Employment Relations Board
510 East 12th Street
Suite 1B
Des Moines, IA 50319-0203

Richard John Miller, Arbitrator